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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/689,975

10/21/2003

Jay S. Walker

02-081

4444

22927

7590

03/17/2008

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STAMFORD, CT 06905

EXAMINER

HSU, RYAN

ART UNIT

PAPER NUMBER

3714

MAIL DATE

DELIVERY MODE

03/17/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/689,975	WALKER ET AL.	
	Examiner	Art Unit	
	RYAN HSU	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-42 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/21/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

This application contains claims directed to the following patentably distinct species. The generic species (Claims 1, 20, and 40-42) are directed towards a method of establishing a game play on a gaming device. The game involves a predetermined number of rounds of the game which are completed and a predetermined amount of time while determining a series of outcomes are for different rounds of game play. Furthermore the game adjusts an initial value of a prize based on the determined outcomes wherein the amount the player is able to win is adjusted based on positive and negative outcomes corresponding to the game play of the different rounds. Finally, the final prize or value is determined and is outputted to the player. It is also noted that an extension of the generic species are found in (claims 6-7, 26-27): which are directed towards a method of the pre-paying for a predetermined number of rounds of a game and adjusting a prize amount based on the outcomes of the game based on the outcomes of the game and incorporates the features of an effect that the outcome will have on the current balance of winnings.

However, the claims in the instant invention are directed towards several distinct species and each species contains different embodiments and variations of that species.

Species 1 (a-d)(claims 11-17 and 31-37): are directed towards the generic method and including applying of a privilege with respect to the game itself. This "privilege" which allows voiding a determined outcome and then contains several embodiments in which it can have the attributes of:

- a) an increase in the final balance of winnings (claims 12 and 32).

b) being applied to the game play at a time it is obtained (claims 14, 33) and having at least one constraint where it involves a predetermined number of rounds, a predetermined number of game plays, a predetermined period of time (claims 15-16, 34-35).

d) a storing capability (claims 17 and 37).

The effects of species one with respect to the claim 1 is independent or distinct because the methodology disclosed in the generic species allows the player to earn a prize based on the outcomes of at least one of the respective outcomes. The instant species attempts to alter the outcomes by introducing the added embodiment of a privilege which voids aspects of the methodology of the generic species.

Species 2 (a-c)(claims 2-5, 18-19, 23-25, 38-39): are directed towards the generic method of crediting during a wagering game. The claims discuss a distinct embodiment of where a credit meter is distinct from the initial balance of winnings (embodiment a) and also discusses embodiments where a balance would be set to zero to accommodate negative balances (embodiment b) and also discusses a separate embodiment for implementing fractional amounts (embodiment c). The embodiments discussed in the instant claims concerning credit/debit monitoring gaming systems have a separate utility and are not necessitated by the process of the methodology. While it is possible for the embodiments of the instant wagering system to include the use of fractional and negative balances it does not carry weight on the instant methodology as it is not clear how the instant invention incorporates the specifics of the credit system with that of the generic embodiment.

Species 3 (claims 8 and 28): are directed towards the generic method and its implementation of using a database to store the plurality of outcomes.

Species 4 (claims 9 and 29): are directed towards automatically initiating each of the predetermined rounds without input from the player.

Species 5 (claims 10 and 30): are directed towards manually initiating each of the rounds based on a command from the player).

Species 6 (claims 21-22) are directed towards qualification criteria of a minimum rate of play or else the player is unable to win the prize amount. This is independent or distinct from that of the generic claims as it would result in a methodology that had no end result. If it was determined that such a winning outcome had occurred but not the additional time criteria was not met then it would not award a prize to a user.

The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the current record.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 6-7, 20, 26-27, and 40-42 are considered generic.

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species to be examined even though the requirement may be traversed (37 CFR 1.143) **and (ii) identification of the claims encompassing the elected species**, including any claims subsequently added. The Examiner has already included a preliminary analysis of the different species and the respective claims however if any changes are necessitated the applicant is strongly encouraged to provide alternative suggestions for species groupings. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The election of the species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RYAN HSU whose telephone number is (571)272-7148. The examiner can normally be reached on 9 :00-17:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571)272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert E Pezzuto/
Supervisory Patent Examiner, Art Unit 3714

RH
February 29, 2008